

**THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

BILLITTERI v. SECURITIES AMERICA,  
INC., *et al.*, (*Provident Royalties Litigation*)

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3:09-cv-01568-P

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

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**PLAINTIFF'S AMENDED MOTION FOR ORDER APPROVING  
DISTRIBUTION OF THE NET SETTLEMENT FUND IN CONNECTION WITH  
CLASS ACTION SETTLEMENT WITH NEXT FINANCIAL GROUP, INC.  
AND NEXT FINANCIAL HOLDINGS, INC.**

Representative plaintiff (“Plaintiff”) Karen L. Bopp, IRA, hereby moves for entry of Plaintiff’s proposed Order Approving Distribution of the Net Settlement Fund (the “Distribution Order”) under Federal Rule of Civil Procedure 23(e) and in accordance with the Settlement Agreement (Dkt. No. 496 at 25)<sup>1</sup> and the Order of Final Settlement Approval and Judgment (Dkt. No. 527) entered by the Honorable W. Royal Furgeson in this matter.

This amended motion seeks the Court’s approval to distribute funds to investors as a result of a class action settlement. The settlement has been finally approved and adjudged to be fair, reasonable and adequate, and all that remains to be done is distribution of the Net Settlement Fund to eligible investors. For the reasons set forth below and in the accompanying declarations and appendix, Plaintiff respectfully requests that the Court enter the accompanying proposed Distribution Order: (i) approving the determinations of Settlement Class Counsel and Milo Segner, Trustee of the PR Liquidating Trust acting in his capacity as settlement administrator for this Settlement; and (ii) directing distribution of the Net Settlement Fund to Settlement Class Members.

Plaintiff previously filed a motion for approval to distribute funds. (Dkt. No. 543) The Texas Attorney General filed submissions opposing certain terms of the proposed distribution of funds based on the Attorney General’s position that any proceeds from distribution checks sent to Settlement Class Members that are uncashed or undeliverable should not be redistributed to other Settlement Class Members because doing so would be contrary to the Texas Unclaimed Property Act. (Dkt. No. 546) The parties have met and conferred with the Texas Attorney General, and the Texas Attorney General has advised that it does not oppose entry of the amended proposed order submitted to the Court herewith.

No party opposes this motion.

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<sup>1</sup> This motion adopts all defined terms as set forth in the Settlement Agreement.

### **BACKGROUND**

On November 3, 2011, Plaintiff and Defendants NEXT Financial Group, Inc. and its parent company, NEXT Financial Holdings, Inc. (collectively, “Settling Defendants”) entered into the Settlement Agreement. (Dkt. No. 496 at 6.) The Court entered the Order (1) Preliminarily Certifying Classes for Settlement Purposes, (2) Granting Preliminary Approval of Settlement, and (3) Approving Class Notice on December 6, 2011 (the “Preliminary Approval Order”). (Dkt. No. 502.) In accordance with the Preliminary Approval Order, Settlement Class Counsel directed Mr. Segner, acting in his capacity as the Court-approved settlement administrator, to print and mail copies of the Notice to Settlement Class Members.

On March 19, 2012, the Court held a hearing to consider the proposed settlement. The Court then issued an Order of Final Approval and Judgment approving the proposed settlement as fair, reasonable, and adequate, dismissing this action as against Settling Defendants, and directing the parties to consummate the Settlement Agreement in accordance with its terms and provisions. (Dkt. No. 527.) Pursuant to the Court’s Final Order, the Court “reserve[d] exclusive jurisdiction...over: (a) implementation of this Settlement and distribution of the Net Settlement Fund to Settlement Class Members....” (Dkt. No. 527 at ¶ 23.)

The Settlement Fund is comprised of two components: (1) a payment of \$4,400,000 from NEXT, including \$2,000,000 negotiated by FINRA; and (2) a \$1,000,000 payment from NEXT’s parent company (NEXT Financial Holdings, Inc.). In accordance with the Settlement Agreement and the Court’s orders, NEXT’s parent company made its \$1,000,000 contribution in five equal quarterly installments with its final quarterly installment payment having been made on January 2, 2013. Accordingly, the Settlement is now fully funded and Plaintiff requests leave to distribute the Net Settlement Fund as contemplated by the Settlement Agreement and the Court’s final approval order.

The Court approved a *pro rata* distribution of the Net Settlement Fund to Settlement Class Members based on the amount invested in Provident Securities, net of any return on investments received and after payment of attorneys' fees, expenses, and administration costs awarded by the Court. (Dkt. No. 527 at ¶ 20.) Payments allocable to the approximately 80% of Settlement Class Members who assigned their claims to the PR Liquidating Trust will be made directly to the Trustee for the PR Liquidating Trust for distribution in accordance with the Bankruptcy Plan and shall not be reduced by any attorneys' fees awarded to Settlement Class Counsel. (Dkt. No. 496 at 7-8.)

### **CLAIMS ADMINISTRATION**

As set forth in the accompanying Declaration of Milo Segner and the Declaration of Dena C. Sharp, Mr. Segner, in consultation with and at the direction of Settlement Class Counsel, sent pre-distribution letters to Settlement Class Members to confirm the details of their investments. Dkt. No. 544, NEXT Distribution Appx. 2-3, 21 (Segner Decl. ¶¶ 5-6; Sharp Decl. ¶¶ 3-4). Mr. Segner's firm performed extensive quality assurance procedures to ensure that its claims review process was accurate and thorough. *Id.* at 3 (Segner Decl. ¶ 8). Settlement Class Counsel has supervised and reviewed the procedures used by Mr. Segner in the administration process. *Id.* at 2-3, 21-22 (Segner Decl. ¶¶ 3, 5; Sharp Decl. ¶¶ 3, 7).

### **DISTRIBUTION OF NET SETTLEMENT FUND**

There are a total of 89 Settlement Class Members with a total of \$36,985,757.40 in net losses eligible for payment under the terms of this Settlement. Appx. 1-6 (Segner Decl. ¶ 9 & Exhibit B). As of June 17, 2013, the Net Settlement Fund has a balance of \$5,207,204.21. Appx. 4 (Segner Decl. ¶ 10.) This figure represents the amount of the Settlement Fund (\$5,400,000), with interest earned thereon (\$10,594.58), less attorneys' fees (\$172,091.60) and costs (\$6,911.03) as approved by the Court, less Mr. Segner's total fees (\$16,080.74) as well as

tax-related payments and bank fees (\$8,307.00).

Based on the number of total Settlement Class members and the net losses that resulted from their investments, each claimant will each receive approximately 14% of his or her net losses from this Settlement—which exceeds Settlement Class Counsel’s previous estimate of a 13% recovery. Appx. 4 (Segner Decl. ¶ 10). The work performed in connection with the administration of the Settlement was conducted in accordance with the terms and provisions of the Settlement Agreement and the Court’s orders. Plaintiff therefore respectfully requests that the Court enter the proposed Distribution Order. Upon entry of the Distribution Order, Settlement Class Counsel will direct the prompt distribution of the Net Settlement Fund to Settlement Class Members.

Dated: July 24, 2013

Respectfully submitted,

**GIRARD GIBBS LLP**

By: /s/ Daniel C. Girard

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